

SENATE BILL 2983

By Herron

AN ACT to amend Tennessee Code Annotated, Title 31;
Title 32; Title 34; Title 36; Title 37; Title 56; Title 68
and Title 71, relative to children.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-2-304, is amended by deleting the section in its entirety and by substituting instead the following:

(a) A man is rebuttably presumed to be the father of a child if:

(1) The man and the child's mother are married or have been married to each other and the child is born during the marriage or within three hundred and thirty (330) days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce;

(2) Before the child's birth, the man and the mother have attempted to marry each other in compliance with the law, although the attempted marriage is or could be declared illegal, void and voidable;

(3) After the child's birth, the man and the mother have married or attempted to marry each other in compliance with the law although such marriage is or could be declared illegal, void, or voidable; and:

(A) The man has acknowledged his paternity of the child in a writing filed under the putative father registry established by the department of children services, pursuant to § 36-2-318; or

(B) The man has consented in writing to be named the child's father on the birth certificate; or

(C) The man is obligated to support the child under a written voluntary promise or by court order;

(4) While the child is under the age of majority, the man receives the child into the man's home and openly holds the child out as the man's natural child; or

(5) Genetic tests have been administered as provided in § 24-7-112, an exclusion has not occurred, and the test results show a statistical probability of parentage of ninety-five percent (95%) or greater.

(b)

(1) Except as provided in subdivision (b)(2), a presumption under subsection (a) may be rebutted in an appropriate action.

(2)

(A) If the mother was legally married and living with her husband at the time of conception and has remained together with that husband through the date a petition to establish parentage is filed and both the mother and the mother's husband file a sworn answer stating that the husband is the father of the child, any action seeking to establish parentage must be brought within twelve (12) months of the birth of the child. In the event that an action is dismissed based upon the filing of such a sworn answer, the husband and wife who filed such sworn answer shall be estopped to deny paternity in any future action.

(B) A petition to establish parentage may be brought under this part if a dismissal of a petition under the prior legitimization statutes was based upon the mother's marriage to another man at the time of conception or upon the petitioner's lack of standing. In such cases, the requirements of subdivision (b)(2)(A) requiring a petition to be filed within twelve (12) months of the birth of the child shall not apply. It is the intent of the general assembly that putative fathers who filed a cause of action

under this chapter prior to the July 1, 1997, effective date of Acts 1997, ch. 477, and whose action was so dismissed, shall have an opportunity to prosecute a single cause of action under this part. Thus, the doctrines of res judicata and collateral estoppel shall not bar such new or pending action, nor shall any statute of limitation that may have run bar such new or pending action. It is the clear and unequivocal intent of the general assembly that this provision shall be applied retroactively to such petitions to establish parentage. No such retroactive application shall, however, abrogate the provisions of § 36-1-122.

(3) The standard of proof in an action to rebut paternity shall be by preponderance of the evidence.

(4) In any case, except terminations of parental rights or adoptions under title 36 or title 37, in which the paternity of a child is at issue and an agreed order or divorce decree has been entered finding that an individual is not the parent of the child, the finding shall not be entitled to preclusive effect unless the finding was based upon scientific tests to determine parentage that excluded the individual from parentage of the child in question.

(c) All prior presumptions of parentage established by the previous paternity and legitimation statutes and cases are abolished.

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.